Message

From: OCSPPNews [OCSPPNews@epa.gov]
Sent: 5/7/2021 8:25:37 PM
To: Blair, Susanna [Blair.Susanna@epa.gov]; Carlisle, Sharon [Carlisle.Sharon@epa.gov]; Collazo Reyes, Yvette [CollazoReyes.Yvette@epa.gov]; Dennis, Allison [Dennis.Allison@epa.gov]; Diaz, Catherine [Diaz.Catherine@epa.gov]; Drinkard, Andrea [Drinkard.Andrea@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Freedhoff, Michal [Freedhoff.Michal@epa.gov]; Garcia, Beth [garcia.beth@epa.gov]; Goodis, Michael [Goodis.Michael@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Hartman, Mark [Hartman.Mark@epa.gov]; Harwood, Laura [Harwood.Laura@epa.gov]; Hauff, Amanda [Hauff.Amanda@epa.gov]; Henry, Tala [Henry.Tala@epa.gov]; Hughes, Hayley [hughes.hayley@epa.gov]; Kaiser, Sven-Erik [Kaiser.Sven-Erik@epa.gov]; Keigwin, Richard [Keigwin.Richard@epa.gov]; Kochis, Daniel [Kochis.daniel@epa.gov]; Kramer, George [Kramer.George@epa.gov]; Labbe, Ken [Labbe.Ken@epa.gov]; Layne, Arnold [Layne.Arnold@epa.gov]; Messina, Edward [Messina.Edward@epa.gov]; Nguyen, Khanh [Nguyen.Khanh@epa.gov]; OPP Branch Chiefs [OPP_Branch_Chiefs@epa.gov]; OPP Deputy & Associate Directors [OPP_Deputy_&_Associate_Directors@epa.gov]; OPP Division Directors [OPP_Division_Directors@epa.gov]; OPP IO [OPP_IO@epa.gov]; OPPT Managers [OPPT_Managers@epa.gov]; OPS CSID CB [OPS_CSID_CB@epa.gov]; Picone, Kaitlin [Picone.Kaitlin@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Pinto, Ana [Pinto.Ana@epa.gov]; Richmond, Jonah [Richmond.Jonah@epa.gov]; Romanovsky, Anna [Romanovsky.Anna@epa.gov]; Schmit, Ryan [schmit.ryan@epa.gov]; Siciliano, CarolAnn [Siciliano.CarolAnn@epa.gov]; Smith, Carolyn [smith.carolyn@epa.gov]; Sullivan, Melissa [sullivan.melissa@epa.gov]; Tyler, Tom [Tyler.Tom@epa.gov]; Vendinello, Lynn [Vendinello.Lynn@epa.gov]; Vernon, Jennifer [Vernon.Jennifer@epa.gov]
Subject: OCSPP News for May 7, 2021

OCSPP Daily News Round-Up

Toxics

- Chemical Watch 05/06; EPA moves to finalise, propose 200 TSCA significant new use rules
- Inside TSCA 05/06; Freedhoff Expected To Win Confirmation Despite TSCA Policy Battles
- Inside TSCA 05/07; Groups Urge EPA To Expand Scope Of OTNE Study To Comply With TSCA
- Inside TSCA 05/06; Former CSB member backs nominees' 'expertise' against industry critique
- The Hill 05/06; Watchdog questions adequacy of EPA standards for carcinogenic chemical emissions

Pesticides

- Bloomberg Law 05/06; Bayer Loses Fight Over Chemicals EU Blamed for Killing Bees (1)

COVID/Disinfectants

- NBC News 05/07; 15 best eco-friendly cleaning products, according to experts

Blog/OpEd/Other

- Bergeson & Campbell Blogs 05/07; EPA Announces Upcoming Webinars on Use of Non-Animal Test Methods in Chemical Risk Assessment
- Earthjustice 05/06; We Just Got a Big Win in Court Against a Pesticide Linked to Harming Kids' Brains
- JD Supra (Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.) 05/06; Toxics Release Inventory/Community Right-to-Know: U.S. Environmental Protection Agency Announces Plan to Address Environmental Justice
- JD Supra (Wiley Rein LLP) 05/06; Protect Your CBI or Go to Court
- Nursey Mag 05/06; The drift dilemma
- The National Law Review (CMBG3 Law) 05/07; PFAS Legislation In Vermont Some of Most Aggressive In U.S.

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EPA moves to finalise, propose 200 TSCA significant new use rules
Kelly Franklin, Chemical Watch
https://chemicalwatch.com/260728/epa-moves-to-finalise-propose-200-tsca-significant-new-use-rules

The US EPA is moving to finalise 88 previously proposed TSCA significant new use rules (Snurs) and issue roughly 120 new ones, the agency has told Chemical Watch.

Doing so will represent a significant step toward clearing a backlog of incomplete regulatory responses for several hundred new substances that have been approved to enter the marketplace in recent years.

The EPA has proposed more than 700 Snurs since TSCA was amended in 2016, according to a database maintained by Chemical Watch. However, it has only finalised around 450 of those.

Many of the Snurs from the later years of the Trump administration were issued in tandem with a determination that a substance does not pose an unreasonable risk. The EPA historically used these so-called 'non 5(e) Snurs' to require that uses beyond those evaluated in a pre-manufacture notice (PMN) review would have to be notified and reviewed by the agency, so it could determine if they present unreasonable risks.

Since 2019, however, "EPA has been delayed in issuing these types of Snurs due to competing priorities, limited resources, and other implementation challenges", the agency told Chemical Watch.

It is currently taking steps to finalise 88 non-5(e) Snurs that were originally proposed on:

31 July 2019, with final Snurs already issued on 6 May;
6 August 2019;
11 October 2019;
4 November 2019; and
6 December 2019.
A number of these Federal Register notices also included so-called '5(e) Snurs', issued in tandem with consent orders. The EPA said it plans to finalise those Snurs in a separate notice, with an expectation for those to "publish this year".

Meanwhile, the EPA is also planning to issue new non-5(e) Snurs for roughly 120 chemicals that received 'not likely' determinations in 2018-2021. Submitters of these PMNs "were notified of EPA's intent to issue these Snurs at the time that the respective determinations were made," according to the agency.

The flurry of activity to close the loop on regulatory proceedings that began under the previous administration's leadership comes even as the agency has announced its intent to move away from issuing Snurs in the absence of consent orders. The EPA said in March that it will increasingly rely on orders, in addition to Snurs, to address concerns stemming from 'reasonably foreseen' uses of a chemical.

Freedhoff Expected To Win Confirmation Despite TSCA Policy Battles
David LaRoss, Inside TSCA
https://insideepa.com/tsca-news/freedhoff-expected-win-confirmation-despite-tsca-policy-battles

A former EPA chemicals chief says Michal Freedhoff is widely expected to win confirmation to lead EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) following her Senate hearing May 12, as stakeholders continue to line up behind her despite industry opposition to many of her TSCA policies.

Jim Aidala, who served as head of the chemicals office during the Clinton administration and now works as a consultant at the law firm Bergeson & Campbell, tells Inside TSCA he expects few "fireworks" at the May 12 Environment and Public Works Committee (EPW) hearing where lawmakers will consider whether to approve Freedhoff, the panel's former Democratic director of oversight, as head of OCSPP.

"As a former Senate staffer coming from the committee of jurisdiction, it's not quite the same as a Senator coming over, but you're already part of the club. . . . Unless you've alienated enough people to make them want to stop you," Aidala says.

Freedhoff has been the top political official at OCSPP since the first days of the Biden administration, and was its acting assistant administrator until her nomination went to the Senate -- a position she has already used to overhaul key elements of EPA's approach to the reformed Toxic Substances Control Act (TSCA), which she helped develop as an EPW staffer.

But Aidala says lawmakers' questions for Freedhoff are more likely to focus on how she plans to manage operations at OCSPP in order to meet TSCA's demanding deadlines for chemical evaluations and rules, than on Republican opposition to her policies.

"All the horseshoe nails to make TSCA implementation go are going to be important," he says.

EPA faces a long list of mandatory TSCA duties in the coming years that could strain its resources, including the requirement to evaluate risks from 20 existing chemicals by 2022 -- even though it struggled to complete just 10 evaluations in the four years after Congress enacted the revised TSCA in 2016.

And lawmakers are also likely to question how Freedhoff will approach implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) since her experience is mainly in toxics -- a rarity for the OCSPP position, which has historically gone to officials with pesticide backgrounds.

"It's the first time that the nomination . . . has gone to a TSCA-oriented person as opposed to a FIFRA-oriented person" since the Carter administration, Aidala says.

And he adds that even if committee Republicans state their opposition to Freedhoff's policies, they are more likely to question why she is taking those steps than try to block her confirmation over them.

"There will be questions along the lines of 'you seem to be changing the previous policies, why is that?'" he says.

Policy Agenda

Industry groups in particular have opposed several of Freedhoff's TSCA policies, including her March announcement that OCSPP will tighten its reviews of new chemical uses, such as by stepping up enforcement orders and expanding consideration of potential harms to workers.

That shift drew immediate attacks from trade groups and industry attorneys, such as the American Chemistry Council's (ACC) argument that if EPA seeks to mandate worker protections in its new-chemical reviews, instead of leaving that subject to the Occupational Safety and Health Administration, it "risks imposing unnecessary delay or possibly redundant or contradictory measures."

She also vowed to reopen Trump-era evaluations of existing chemicals that Democrats and environmental groups say were not stringent enough, which would set the stage for stronger risk-management rules based on the findings in those documents.

Yet while industry has opposed those policy shifts, that opposition has not extended to Freedhoff's nomination. Rather, several groups have attacked her more-stringent TSCA approach while either urging EPW to confirm her, or praising her work and vowing to find common ground on toxics should she be confirmed.

For...

Groups Urge EPA To Expand Scope Of OTNE Study To Comply With TSCA
Maria Hegstad, Inside TSCA
https://insideepa.com/tsca-news/groups-urge-epa-expand-scope-otne-study-comply-tsca

Environmental, labor and research groups are urging the Biden EPA to broaden its pending TSCA evaluation of four chemicals known as the OTNE cluster, saying industry groups that sought the study provided only a narrow slice of data on the chemicals' uses and risks -- among other flaws they say highlight vulnerabilities in EPA's evaluation process.

In May 5 comments on the scope of the OTNE evaluation, a coalition of environmental and labor groups says the manufacturers' request "does not contain sufficient information for EPA to conduct the risk evaluation that [the Toxic Substances Control Act (TSCA)] requires," because it omits several known or reasonably foreseen conditions of use, and fails to identify known effects on human health or the environment.

The industry coalition that requested the OTNE evaluation sought review of only two conditions of use: manufacturing and use of the chemicals "as a fragrance ingredient in consumer products."

The agency then sought comment on whether to broaden the scope of its review to other uses, leading to the current comments.

But the environmental coalition, which includes Earthjustice, Alaska Community Action on Toxics, BlueGreen Alliance, Environmental Defense Fund, Environmental Working Group, Natural Resources Defense Council and Safer Chemicals Healthy Families among others, says TSCA requires EPA to evaluate all of a chemical's conditions of use -- requiring the agency to broaden the evaluation far beyond what industry requested.

"EPA cannot decline to characterize as conditions of use activities that fit within TSCA's statutory definition of conditions of use, and its attempts to do so in the past have been struck down in federal court," reads the letter, citing the 2019 case Safer Chemical Healthy Families et al v. EPA where the U.S. Court of Appeals for the 9th Circuit held that the Trump administration could not lawfully exclude discontinued "legacy" uses from its evaluations.

But it adds that the manufacturers' request excluded not only the other uses but key data needed to identify them and potential harms they cause -- prompting the coalition to commission its own "supplemental analysis of previously unidentified OTNE Uses," which it sent to EPA along with the comment letter.

While the coalition says those omissions give EPA grounds to deny the industry request, it urges EPA to instead take up the evaluation with a greatly expanded scope. "[T]he significant threat posed by OTNE warrants evaluation and regulation by EPA, but in conducting the OTNE risk evaluation TSCA requires EPA to look beyond the scope of that request and to fill those data gaps," the letter says.

Specifically, the groups say their analysis "identifies more than 10 additional conditions of use that must be considered in EPA's risk evaluation," including processing OTNE for incorporation into articles, dispensing OTNE in fragrances in public spaces such as airports and hotel lobbies and OTNE use in various scented products ranging from bedding to carpets, to clothing, paint, candles, waxes and tobacco flavoring, among others.

Further, they argue that to conduct a "meaningful" evaluation of OTNE, the Biden EPA "must also correct the flaws that plagued the Trump Administration's TSCA risk evaluations," such as its assumptions that workers will always use personal protective equipment (PPE) and the decisions not to consider either general-population exposures or those pathways that are or could be regulated by statues other than TSCA, among other critiques.

EPA officials have vowed to undo some of those policies but the agency has yet to make substantive changes to a completed or pending TSCA evaluation that would show exactly how they plan to move forward -- meaning the OTNE study could set a key precedent for the Biden administration's treatment of other existing chemicals.

'Persistent' Chemicals

EPA originally planned to regulate two chemicals in the OTNE cluster as "persistent...

Former CSB member backs nominees' 'expertise' against industry critique
N/A, Inside TSCA
https://insideepa.com/tsca-takes/former-csb-member-backs-nominees-expertise-against-industry-critique

A former member of the Chemical Safety and Hazard Investigation Board (CSB) is defending President Joe Biden's three nominees to the panel against claims that they lack necessary experience in process safety, arguing that their "different expertise" in worker safety and chemicals policy can still be valuable in its work.

Kristen Kulinowski, who was a CSB member from 2015-20 and is now director of the Institute of Defense Analyses' Science and Technology Policy Institute, tells Inside TSCA that an advantage of a five-member board is the "ability to bring on people from different backgrounds with different expertise," rather than requiring each member to be expert in all areas of CSB's work.

President Joe Biden announced April 28 that he intends to name three CSB nominees after the board dwindled to a single member, Chair Katherine Lemos, under the Trump administration. They are Sylvia Johnson, a former union epidemiologist and current lobbyist for the National Education Association; Steve Owens, former chemicals chief for the Obama EPA; and Jennifer Sass, a senior scientist with the Natural Resources Defense Council.

But while calls for staffing up CSB have been bipartisan, with labor and industry groups alike warning that the panel cannot function properly as a "quorum of one," the American Chemistry Council (ACC) quickly objected to the specific nominees Biden chose, saying they lack needed experience.

ACC said in an April 30 press release that it is "disappointed that the current slate of nominees lack sufficient experience and familiarity with industrial process safety practices or chemical manufacturing operations," and that "[p]rocess safety experience is critical to an effective Chemical Safety Board."

CSB is an independent federal agency tasked with investigating industrial chemical accidents at sites across the country and making recommendations to policymakers and facilities on how to prevent future incidents. It was created by the Clean Air Act Amendments of 1990 and is overseen by EPA's Office of Inspector General.

But Kulinowski says that while she "definitely supports" having someone on the board with that experience, every member need not share that background -- and she notes that Biden only announced three nominees so far, leaving one seat open for a member who could round out a "diverse" panel.

"The fifth slot could be that person," Kulinowski says. "That person is not yet identified, perhaps there's a person in the works who could bring that experience to the board - though it's not yet clear if there will be a fifth person."

She continues that during her time as a CSB member she "served on a board of four, with an attorney with government management experience, someone from the labor community, someone with fifty years of experience in the chemical industry, and myself."

"That provided a very rich and diverse conversation around the investigations and reports that the staff were bringing us," Kulinowski says.

Despite the potential confirmation battle over the nominees, Kulinowski says that she takes it as a "very positive sign for the agency" that Biden is nominating CSB members so early in his term.

"Back when I was seeing this gap on the horizon when I was still with the agency, we were very concerned that it could take a year for the president to even get around to the CSB," she said. "So it's a very good sign that this administration supports the existence and continued success of the agency."

Watchdog questions adequacy of EPA standards for carcinogenic chemical emissions
Rachel Frazin, The Hill
https://thehill.com/policy/energy-environment/552240-watchdog-questions-adequacy-of-epa-standards-for-carcinogenic

An internal government watchdog on Thursday questioned the adequacy of Environmental Protection Agency (EPA) emissions standards for an air pollutant that the agency considers carcinogenic and another that it considers likely carcinogenic.

A report from the EPA's inspector general's office said that there are "potentially unacceptable risks from chloroprene and ethylene oxide emissions in some areas of the country."

It added that the agency can't "provide assurance" that its current standards regulating emissions of the chemicals are protective.

The watchdog said this is because the agency hasn't included new risk evaluations for the substances into a relevant review process for the types of facilities that emit the chemicals.

"In the absence of updated reviews for the applicable source categories, the Agency cannot provide assurance that its current [National Emission Standards for Hazardous Air Pollutants] are protective," the report said.

It also analyzed EPA data to find that more than 464,000 people live in census tracts where people's cancer risks are greater than 100 in 1 million and where ethylene oxide or chloroprene are the major drivers of this risk.

In 2016, the EPA determined that ethylene oxide, which can be used to form chemicals including anti-freeze or as a sterilizing agent, was carcinogenic to humans. In 2010, it found that chloroprene, which can be used to make products like adhesives and automotive parts, was likely carcinogenic to humans.

In its official response to the report, the EPA said that it could finish new rules for certain relevant industries between the fourth quarter of 2022 and the fourth quarter of 2024.

It also said it's planning to conduct a technology review for the standards for chemical manufacturing emissions, and plans to consider ethylene oxide emissions as part of that action.

The agency argued that there are limitations to the data the agency used to calculate how many people live in at-risk census tracts. It pointed out that the information is from 2014, making it several years old and said the agency needs more verification that the tracts are reflective of where people actually live.

Separately, another recent report from the agency's internal watchdog found that a Trump administration political official delayed the publication of information about ethylene oxide in Illinois and said senior officials sought to restrict regional officials from certain monitoring activities for the substance.

Bayer Loses Fight Over Chemicals EU Blamed for Killing Bees (1)
Stephanie Bodoni, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/bayer-loses-fight-over-chemicals-eu-blamed-for-killing-bees-1?access-ticket=eyJjdHh0IjoiTkVWRSIsImlkIjoiMDAwMDAxNzktNDFkMy1kNzc5LWEzN2ItYzlmNzhmNWMwMDAzIiwic2lnIjoiYmVlblJ6Y3lkcjAxODAyY1RxcXBpbHUvM2JVPSIsInRpbWUiOiIxNjIwMzg2MDg3IiwidXVpZCI6IkNpZTZtL0twbVFTUTBWRGlkM09QYlE9PUdKUHRmUkx6WkpTWVBUYzl3UFJPaWc9PSIsInYiOiIxIn0%3D

- EU imposed restrictions in 2013 amid concerns about bee deaths
- Bayer, Syngenta three years ago lost a first EU court fight

Bayer AG lost its fight to topple a European Union ban on controversial insecticides that regulators blame for killing honeybees.

The EU Court of Justice dismissed the appeal, finding there were no legal errors in the European Commission's decision to impose restrictions on the substances' use, based on concerns that the chemicals posed "high acute risks for bees" and "the survival and development of colonies in several crops."

Bayer and Syngenta AG in 2018 already lost a first round in court after telling judges that the EU ban on three so-called neonicotinoids forced farmers to revert to potentially more harmful chemicals. Bayer appealed one more time.

The EU's decision five years earlier imposed limits on the use of three neonics -- clothianidin, imidacloprid and thiametoxam -- saying they were "harmful" to Europe's honeybee population when used to treat flowering plants with nectar that attracts the insects.

The court ruled on Thursday the commission "is entitled to consider that a risk to the colonies could not be ruled out" even if there is "scientific uncertainty at this stage as to the rate of mortality of individual bees."

EU governments in 2018 voted in favor of widening the ban of neonicotinoids to apply everywhere, except for greenhouses. The commission has described the chemicals as "systemic," causing the entire plant to become toxic to bees.

Bayer said in an emailed statement that Thursday's ruling "seems to allow the commission almost carte blanche to review existing approvals upon the slightest evidence, which need not even be new scientific data."

The company said it accepts the 2018 decision to broadly restrict the use of certain neonicotinoids in agriculture, but that it "stands by the safety of its products -- which have been approved by regulatory bodies around the globe -- and reiterates the value that these products have for farmers in managing pests effectively."

France, the EU's top sugar exporter, last year partially lifted a ban on neonicotinoids by allowing its use for seed coatings for three years through 2023 after farmers suffered heavy losses from beet yellows virus spread by aphids that neonicotinoids help control.

The European Food Safety Authority in December said it will assess 21 emergency authorizations by EU nations to use neonicotinoids for sugar beet crop.

The case is: C-499/18 P, Bayer CropScience AG and Bayer AG v. European Commission.

(Updates with Bayer comment in seventh, eighth paragraphs)
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15 best eco-friendly cleaning products, according to experts
Zoe Malin, NBC News
https://www.nbcnews.com/shopping/home-and-kitchen/eco-friendly-cleaning-products-n1266586

"Eco-friendly" and "green" are words some brands toss around to describe cleaning products like all-purpose sprays and disinfectants. But what do these terms mean? In some cases, experts told us, these labels can mean nothing at all — the use of these words by brands is not regulated.

There is no specific criteria detailing what eco-friendly or green means when companies add it to a product's packaging, explained Nancy Simcox, an assistant teaching professor at the University of Washington's department of environmental and occupational health sciences. This poses a problem for shoppers — it's hard to know whether we're buying products actually designed with the environment in mind, no matter how often the word appears on its product website, label and packaging. A similar problem arises with buying face masks like KN95s, products claiming they're carbon neutral or "clean" beauty products, unless they're certified by a specific company or organization or otherwise beholden to an actual review process.

We talked to experts about what steps shoppers can take to find actually eco-friendly cleaning products and how to choose the best ones to buy for their homes. Experts also recommended additional Earth-friendly cleaning practices to consider adopting, from using microfiber towels to DIY cleaning solutions.

Eco-friendly. Green. All-natural. Sustainable. When brands use words like these on their packaging without contextualizing what they really mean, they're "greenwashing" products, noted Simcox. In her experience, consumers don't often question the significance of these words — if they did, Simcox argued, they would learn that definitions vary by brand and even by product.

Cleaning has gone through a revolution — cleaning products and chemicals can be vetted now and there's a scientific basis to that vetting.

In order to avoid "greenwashed" cleaning products, experts recommended looking for cleaning products certified by organizations like the EPA and Green Seal through verified ecolabels, which the EPA defines as "marks placed on product packaging that help consumers identify products that meet specific environmental performance criteria and are therefore deemed 'environmentally preferable.'" Experts said that these ecolabels — which can be owned or managed by government agencies, nonprofit environmental advocacy organizations or private sector entities — are the best way to ensure that what you're using really is designed to be safe for the

environment in some degree.

"Cleaning has gone through a revolution," said Simcox, who is also chair of the American Public Health Association's Occupational Health and Safety Section. "Cleaning products and chemicals can be vetted now and there's a scientific basis to that vetting. These certifications help guide the consumer in the right direction."

Anna Reade, a staff scientist for the National Resources Defense Council (NRDC), a nonprofit environmental advocacy group, finds third party certifications to be helpful because consumers don't have to be experts in chemicals to make educated shopping decisions. She said while shoppers can learn the specific names of dangerous chemicals and read cleaning product ingredient lists, it's time-consuming. Instead, third party certifications do the work for you and simplify the process.

"It shouldn't be hard to figure out how to protect ourselves and the environment from harmful cleaning supplies," said Reade, who is a part of NRDC's Healthy People & Thriving Communities program. "These labels and certifications really help people wade through their options."

Specifically for cleaning products, the EPA runs two ecolabel programs.

Safer Choice applies to cleaning products like all...

EPA Announces Upcoming Webinars on Use of Non-Animal Test Methods in Chemical Risk Assessment
Lynn L. Bergeson and Carla N. Hutton, Bergeson & Campbell Blogs
https://www.tscablog.com/entry/epa-announces-upcoming-webinars-on-use-of-non-animal-test-methods-in-chemic

The U.S. Environmental Protection Agency (EPA) announced on May 7, 2021, that it is partnering with the People for the Ethical Treatment of Animals (PETA) Science Consortium International, Unilever, and Syngenta on a three-part virtual workshop series on "Using In Silico and In Vitro Approaches for Next Generation Risk Assessment of Potential Respiratory Toxicants." EPA states that this webinar series supports its commitment "to collaborate with partners and stakeholders to reduce, refine, or replace vertebrate animal testing, as outlined in the Strategic Plan to Promote the Development and Implementation of Alternative Test Methods within the [Toxic Substances Control Act (TSCA)] Program." The webinars will take place on May 19, May 26, and June 2, 2021, from 8:00 a.m. to 10:00 a.m. (EDT). Each webinar will feature three speakers. The meeting agenda and registration information are available at www.thepsci.eu/inhalation-webinars. Attendees must register for each of the three webinars individually.

We Just Got a Big Win in Court Against a Pesticide Linked to Harming Kids' Brains
N/A, Earthjustice
https://earthjustice.org/brief/2021/we-just-got-a-big-win-in-court-against-a-pesticide-linked-to-harming-kids-brains

Children and farmworkers may soon be spared from a toxic pesticide linked to lifelong intellectual disabilities. On April 29, a federal appeals court sided with Earthjustice and its clients, and ordered the Environmental Protection Agency to either ban all food uses of chlorpyrifos, or figure out how to regulate it in a way that protects those vulnerable populations.

Why is chlorpyrifos harmful?

Developed by the Nazis for warfare, organophosphates like chlorpyrifos were repurposed for agriculture. Now chlorpyrifos is widely used — and, as the EPA's own scientific reviews have said, unsafe. Decades of studies have linked in-utero exposure to chlorpyrifos and other organophosphates to reduced IQ, attention disorders, and autism in kids.

Chlorpyrifos enters our bodies through the water we drink and the food we eat, including fruits and vegetables from oranges to cilantro to raisins. Farmworkers who use the pesticide or simply enter fields where it has been sprayed are particularly at risk.

"I didn't understand just how terrible these toxic chemicals can be until my son, Isaac, was born with a mental disability," activist and former farmworker Claudia Angulo wrote for Earthjustice in 2018. "I am sure that chlorpyrifos damaged my son's brain for life."

'The EPA's time is now up.'

For years, Earthjustice and partners asked the government to ban chlorpyrifos. The Obama administration was on track to outlaw the pesticide on food, but the Trump administration reversed course.

The Trump administration's actions broke the law. If the EPA cannot ensure that a pesticide won't harm children, the 1996 Food Quality Protection Act requires the EPA to ban uses of the pesticide on food.

On behalf of health, labor, and learning disability organizations, Earthjustice sued the EPA for shirking this duty.

In its decision in April 2021, the 9th Circuit Court of Appeals wrote: "The EPA's egregious delay exposed a generation of American children to unsafe levels of chlorpyrifos … But the EPA's time is now up."

Public support for a chlorpyrifos ban helped move the needle.

As our case worked its way through the courts, more than 350,000 Earthjustice supporters sent messages to their political representatives asking them to ban the toxic chemical. (Add your voice today!)

This public pressure moved states like Hawai'i, California, Oregon, and New York to pass their own chlorpyrifos bans in the last few years. In addition, the largest U.S. producer of chlorpyrifos announced it will stop making the pesticide.

On his first day in office, President Biden ordered the EPA to review the Trump administration's decision not to ban chlorpyrifos. That review is still under way.

What happens next?

The court gave the EPA 60 days from the end of the case to either ban all food uses of chlorpyrifos or retain only those uses it can find safe for workers and children.

The science is clear: There are no safe uses of chlorpyrifos. Therefore, we should expect — and demand — a total ban.

"The Court got it right: EPA's time is now up," says Patti Goldman, a managing attorney at Earthjustice. "EPA must now follow the law, ban chlorpyrifos, and protect children and farmworkers from a pesticide we know is linked to numerous developmental harms."

What can I do?

Tell EPA Administrator Regan to follow through with the federal appeals court's order, and ban chlorpyrifos now.

Toxics Release Inventory/Community Right-to-Know: U.S. Environmental Protection Agency Announces Plan to Address Environmental Justice

Walter Wright Jr., JD Supra (Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.)

https://www.jdsupra.com/legalnews/toxics-release-inventory-community-7872734/

The United States Environmental Protection Agency ("EPA") issued an April 29th news release outlining a plan to "update the Toxics Release Inventory to advance Environmental Justice."

EPA states that it will be undertaking activities related to the Toxics Release Inventory ("TRI") to:

Advance Environmental Justice
Improve transparency
Increase access to environmental information
The TRI is a publicly available database that contains information on toxic chemical releases and other waste management activities reported annually to EPA by certain covered industry groups as well as federal facilities. The TRI was established pursuant to the federal Emergency Planning and Community Right-to-Know Act of 1986 and was subsequently expanded by the Pollution Prevention Act of 1990. Facilities in certain industries which manufacture, process, or use significant amounts of toxic chemicals, are required to report on their releases of these chemicals on an annual basis.

"Environmental Justice" is described by EPA as the:

. . . fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.

Fair treatment is described by EPA as meaning that:

. . . no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

EPA describes in the April 29th news release that its comprehensive plan related to the TRI includes:

Expanding the scope of TRI reporting requirements to include additional chemicals and facilities (including facilities that are not currently reporting on ethylene oxide (EtO) to address such releases)
Provide additional tools to make TRI data more accessible to the public
Specific components described in the EPA news release include:

TRI Facility Expansion to Include Certain Contract Sterilizers using EtO
TRI Reporting for Natural Gas Processing Facilities
TRI Reporting for Additional Per-and Polyfluoroalkyl Substances (PFAS)
TRI Reporting for Toxic Substance Control Act Workplan and High-Priority Chemicals
Enhancing TRI search tools to include a "Demographic Profile" section displaying a map showing information like the income profile and the racial makeup surrounding TRI facilities
Providing a Spanish version of the TRI website
Promoting the Use of Pollution Prevention Information as a tool for communities to engage with reporting facilities on workable solutions for building community health by encouraging facilities to reduce their use and releases of toxic chemicals . . .

A copy of the news release can be found here.

Protect Your CBI or Go to Court
Erik Baptist, JD Supra (Wiley Rein LLP)
https://www.jdsupra.com/legalnews/protect-your-cbi-or-go-to-court-7451427/

Last week, the U.S. Environmental Protection Agency announced that it was releasing a list of 390 chemicals that the agency expected to lose their confidential status and move to the public portion of the TSCA Inventory.

EPA stated that submitters had reported that the specific identities of these chemicals were not confidential in their Chemical Data Rule (CDR) reporting from the 2012, 2016, and/or 2020 reporting periods. EPA advised that interested stakeholders should ask questions and share any concerns about this CBI release with EPA staff by no later than May 14, 2021.

Even though it appears that this release of CBI will not be contested, EPA's announcement is a good reminder that submitters must ensure that they meet the requirements of TSCA to receive CBI protection. If EPA determines that you failed to substantiate your CBI claim, then your company's only recourse is to file a lawsuit in federal district court before the date on which EPA plans to disclose the information. TSCA prohibits EPA from disclosing this information pending judicial review of the determination.

To avoid litigation costs and the risk of losing CBI, it pays to invest now to ensure that you are meeting the TSCA substantiation requirements. For more information about confidentiality claims under TSCA, please see Wiley's prior Alert.

The drift dilemma
Kelli Rodda, Nursey Mag
https://www.nurserymag.com/article/herbicide-drift/

You've tasked crews to scout for pests and diseases. But are you monitoring your crops for another potential problem – one that may be perpetrated by your neighbor? The predicament in question is herbicide drift, and pundits say it's not a question of if you'll experience drift, but when.

A common source of herbicide drift damage to nursery crops comes from two chemicals commonly used in ag, Dicamba and 2,4-D.

Drift can occur as particle drift or vapor drift, according to Tanner Delvalle at Penn State Extension. Particle drift occurs when small spray droplets move long distances due to wind. When a pesticide volatilizes or evaporates into the atmosphere and moves off site and damages non-target plants, it's known as vapor drift. It's important to know that drift, especially vapor drift, may travel more than 1 mile.

Row crops are not the only source of drift. For example, if your nursery is close to a golf course, a park, a maintained road, a rail line, or a residential development, it's likely you'll experience drift injury.

Steve Black, founder of Raemelton Farm in Frederick County, Maryland, experienced significant drift damage from a nearby property in 2017. It was early spring at his B&B nursery and trees were just starting to leaf out, the crew had stopped digging and was transitioning into planting and monitoring for pests. At first, Black and his crew noticed some oaks that "just didn't look right," he says. A local extension researcher visited the nursery and thought it could have been from a late frost. But these trees broke bud after the area's last frost, Black recalls. Next, another extension professional observed the trees and thought it looked like herbicide damage, consequently asking Black what his crew sprayed. But that particular row hadn't been treated with any herbicides since the previous summer. Then Black and his scouting crew noticed other trees that looked odd, such as red maples with "droopy" leaves and conifers with that same droopy characteristic, but in the leaders. Soon it became apparent that for some species of trees, the odd growth patterns were happening across the entire property. But for others, it appeared only at one end of the farm, what Black called a "spatial gradiation." For the oaks, there was damage of some sort on every single specimen on the property. The trees closest to the drift source were in their second year of production.

Different species of trees have different levels of sensitivity. The dogwoods closest to the drift source had obvious damage, but that obvious signs dropped off the farther away from the source.

"And there is no remedy for systemic herbicide exposure except to water the trees and try to keep them healthy otherwise," Black says.

After a handful of experts, including extension agents, university researchers and a for-hire scout, concluded it looked like herbicide damage, Black informed the Maryland Department of Agriculture (MDA), which sent a representative to take samples and begin an investigation. MDA acquired the spray records from everyone in the area (including Black's own records), and they identified a nearby property that used Dicamba. Unfortunately, the operator's spray records were not complete, to say the least. The investigation found that the farmer used concentrations and spray tips were specifically prohibited by the label.

Black contacted the farmer and explained the damage to his trees, and the farmer said he needed some time to think about the issue. Next, Black received a letter from the farmer's lawyer who said to take it up with the farmer's insurance company.

The insurance company was ready to settle, but the amount covered only about 10% of the damages.

"In my situation, the sprayer's insurance policy considers herbicide drift as farm pollution and their policy was capped at a very small number," Black explains. "So, the insurance company offers me this very small number and says once I accept it, I have to agree not to...

PFAS Legislation In Vermont Some of Most Aggressive In U.S.
John Gardella, The National Law Review (CMBG3 Law)
https://www.natlawreview.com/article/pfas-legislation-vermont-some-most-aggressive-us

On May 5, 2021, Vermont entered the final stages of enacting one of the most aggressive pieces of legislation related to PFAS in the country. The PFAS legislation in Vermont (S 20) was approved by the state House 145-0. Since the legislation was previously approved by the Vermont Senate, the only steps remaining before the bill is enacted into law are minor amendments to the legislation and approval and signature by the governor. A similar version of the bill was proposed in years past; however, unlike the 2021 bill, it was contentiously debate before failing to pass.

What Does the PFAS Legislation In Vermont Do?
The PFAS legislation in Vermont would impose several significant restrictions with respect to PFAS, including:

Impose restrictions on the use, manufacture, sale, and distribution of class B firefighting foam containing PFAS, unless such foams are required by federal law (the bill also prohibits the use of PFAS firefighting foam for training exercises);

Impose restrictions on the production, sale, and distribution of food packaging to which PFAS have been intentionally added;

Impose restrictions on the manufacture, sale, and distribution of residential rugs and carpets to which PFAS have been intentionally added, as well as the use of after-market treatment products that contain PFAS;

Ban the manufacture, sale and distribution of PFAS-containing ski wax, if the PFAS was intentionally added; and

Include three types of PFAS (PFHxS, PFHpA, PFNA) on the list of chemicals of high concern to children.

While many of the provisions mirror PFAS legislation in other states, the provisions related to carpets, rugs, and ski wax would be the first of their kind in the United States. Earlier versions of the bill included PFAS as a class of chemicals (which would include several thousand PFAS) to the chemicals of high concern to children; however, the current bill includes just the three types of PFAS that Vermont already regulates in its drinking water.

Implications To Businesses From The PFAS Legislation In Vermont
It is of the utmost importance for businesses along the whole supply chain to evaluate their PFAS risk. Public health and environmental groups urge legislators to regulate these compounds. One major point of contention among members of various industries is whether to regulate PFAS as a class or as individual compounds. While each PFAS compound has a unique chemical makeup and impacts the environment and the human body in different ways, some groups argue PFAS should be regulated together as a class because they interact with each other in the body, thereby resulting in a collective impact. Other groups argue that the individual compounds are too diverse and that regulating them as a class would be over restrictive for some chemicals and not restrictive enough for others.

Companies should remain informed so they do not get caught off guard. Regulators at both the state and federal level are setting drinking water standards and notice requirements of varying stringency. For any manufacturers, especially those who sell goods interstate, it is important to understand how those various standards will impact them, whether PFAS is regulated as individual compounds or as a class. Conducting regular self-audits for possible exposure to PFAS risk and potential regulatory violations can result in long term savings for companies and should be commonplace in their own risk assessment.

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And while you're reading.... Remember to shoot your coworkers a shooting star!
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